

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Roy L. Smith,	)	
	)	C/A No. 0:07-275-HFF-PJG
Plaintiff,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Nurse Amy L. Smith,	)	
	)	
Defendant.	)	
_____	)	

The plaintiff, Roy L. Smith (“Smith”), a self-represented state prisoner, filed this civil rights matter pursuant to 42 U.S.C. § 1983. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC on Smith’s motion to appoint counsel (Docket Entry 72), motion for subpoenas (Docket Entry 81), and motion for a jury trial (Docket Entry 82).

**A. Motion to Appoint Counsel**

Smith first seeks appointment of counsel in this matter, alleging ignorance of the law and limited access to legal resources. Smith further alleges that the issues in this case are complex and appointed counsel would better enable him to present his case. (See Docket Entry 72.)

There is no right to appointed counsel in § 1983 cases. Hardwick v. Ault, 517 F.2d 295 (5th Cir. 1975). As stated in 28 U.S.C. § 1915(e)(1), the court may use its discretion to appoint counsel for an indigent in a civil action. Smith v. Blackledge, 451 F.2d 1201 (4th Cir. 1971). However, such appointment “should be allowed only in exceptional cases.” Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). Whether exceptional circumstances are present depends on the type and complexity of the case, and the *pro se* litigant’s ability to prosecute it. Whisenant v. Yuam, 739 F.2d 160 (4th Cir. 1984).

Upon review of the file, the court concludes that there are no exceptional or unusual circumstances presented at this time which would justify the appointment of counsel, nor would the plaintiff be denied due process if an attorney were not appointed. Id. Moreover, the court observes that to date, Smith has submitted numerous filings with the court, including motions, responses, and letters, which adequately express his positions. Accordingly, the plaintiff's request for a discretionary appointment of counsel (Docket Entry 72) under 28 U.S.C. § 1915(e)(1) is denied.

**B. Motion for Subpoenas**

Smith has also filed a motion for subpoenas pursuant to Federal Rule of Civil Procedure 45. (Docket Entry 81.) Smith moves for the court to issue a subpoena to the Warden of Evans Correctional Institution, Willie L. Eagleton, requesting that he provide Smith with a copy from a medical log book for the day of May 20, 2006. Upon receipt of that information, Smith requests that additional subpoenas be issued to "Female Officer W/F Ms. Commings" and to Nurse Rebecca West to testify at trial and to provide a full written statement. (Docket Entry 81 at 2.) Finally, Smith requests that a subpoena be issued to "Dr. Mr. Pravin R. Patel" for "questioning surrounding his affidavit to verify it[']s his written or oral statement and signature." (Id.)

With regard to the subpoena directed to Warden Eagleton, the Clerk of Court is directed to provide Smith with a blank subpoena form so that he may complete it and return it to the Clerk of Court for issuance pursuant to the Federal Rules of Civil Procedure and the practice of this court. With regard to the remaining subpoenas, to the extent that Smith is seeking to subpoena individuals to testify at trial, his request is premature. There are currently no evidentiary hearings or trials set in this matter. Therefore, this request is denied at this time with leave to re-file if a trial is scheduled.

**C. Motion for a Jury Trial**

Finally, Smith filed a motion demanding a jury trial pursuant to Federal Rule of Civil Procedure 38(b). (Docket Entry 82.) A review of the court's electronic case filing system in this matter reveals that the Defendant demanded a jury trial in her answer, which is reflected in the docket. Smith's motion (Docket Entry 82) does not appear to be opposed and is granted.

**IT IS SO ORDERED.**

  
Paige J. Gossett  
UNITED STATES MAGISTRATE JUDGE

March 25, 2010  
Columbia, South Carolina